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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/285,060 04/02/99 CATT

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EXAMINER

QM12/0118

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ART UNIT

PAPER NUMBER

3736

DATE MAILED:

01/18/01

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.

09/285,060

Applicant(s)

Catt et al.

Examiner

Charles Marmor, II

Group Art Unit

3736

☒ Responsive to communication(s) filed on Oct 25, 2000

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 1-16 and 18-50 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☒ Claim(s) 18, 22, and 23 is/are allowed.

☒ Claim(s) 10, 11, 21, and 24-50 is/are rejected.

☒ Claim(s) 1-9, 12-16, 19, and 20 is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☒ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been

☒ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☐ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 6,8

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

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### **DETAILED ACTION**

This Office Action is responsive to the Amendment filed October 25, 2000. The Examiner acknowledges the cancellation of claim 17 and the amendments to claims 1,8,10,17,18,22,24,27, and 36. A discrepancy exists within said Amendment. Claim 17 is canceled, but is subsequently amended. For purposes of examination, the Examiner shall treat claim 17 as if it has been canceled.

#### ***Information Disclosure Statement***

1. The information disclosure statement filed July 17, 2000 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each U.S. and foreign patent; each publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been fully considered.

The foreign patent documents and other publications cited in the aforementioned IDS have not been considered by the Examiner because no copies of the references have been supplied. Although Applicant directs the Examiner to references previously submitted to the Office in a prior application that is properly identified in the statement, this practice fails to comply with 37 CFR 1.98(d) because the prior application is not relied upon for an earlier filing date under 35 U.S.C. 120.

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*Claim Objections*

2. Claim 1 is objected to because of the following informalities: in line 13, "as" apparently should read --a--. Appropriate correction is required.
3. Claim 16 is objected to because of the following informalities: in line 2, --according-- apparently should be inserted following "kit". Appropriate correction is required.
4. Claim 19 is objected to because of the following informalities: in line 3, "are" apparently should read --is--. Appropriate correction is required.
5. Claim 28 is objected to because of the following informalities: in line 2, --means-- apparently should be inserted following "transmission". Appropriate correction is required.
6. Claim 49 is objected to because of the following informalities: in line 2, "monitor" apparently should read --monitoring device--. Appropriate correction is required.

*Claim Rejections - 35 USC § 112*

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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8. Claims 10,11,21, and 24-50 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 10,11, and 24-26, the word "means" is preceded by the word(s) "electronic data transmission" in an attempt to use a "means" clause to recite a claim element as a means for performing a specified function. However, since no function is specified by the word(s) preceding "means," it is impossible to determine the equivalents of the element, as required by 35 U.S.C. 112, sixth paragraph. See *Ex parte Klumb*, 159 USPQ 694 (Bd. App. 1967).

Regarding claim 21, the claim is dependent on claims 17,18, or 19; however, claim 17 has been canceled by way of the Amendment filed October 25, 2000.

Claim 27 recites the limitation "said computer means" in lines 18 and 19. There is insufficient antecedent basis for this limitation in the claim. There are no computer means recited in the claim prior to these recitations. Furthermore, the word "means" is preceded by the word(s) "computer" in an attempt to use a "means" clause to recite a claim element as a means for performing a specified function. However, since no function is specified by the word(s) preceding "means," it is impossible to determine the equivalents of the element, as required by 35 U.S.C. 112, sixth paragraph. See *Ex parte Klumb*, 159 USPQ 694 (Bd. App. 1967).

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***Allowable Subject Matter***

9. Claims 18,22, and 23 apparently are allowable over the prior art of reference.
10. Claims 1-50 apparently would be allowable if rewritten or amended to overcome the claim objections and the rejection(s) under 35 U.S.C. 112, 2<sup>nd</sup> paragraph, set forth in this Office action.

***Response to Arguments***

11. Applicant's arguments filed October 25, 2000 have been fully considered and are persuasive. The rejections under 35 U.S.C. § 102(b) and 35 U.S.C. § 103(a) made in the Office Action dated April 21, 2000 have been withdrawn.

***Conclusion***

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

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will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles Marmor, II whose telephone number is (703)305-3521. The examiner can normally be reached Monday - Thursday from 7:30am - 5:00pm. Additionally, the SPE for Art Unit 3736 is Cary O'Connor whose phone number is (703)308-2701, and the group's central fax number is (703)305-3590.

Any inquiry of a general nature or relating to the status of this application should be directed to the group receptionist whose telephone number is (703)308-0858. The fax number for Art Unit 3736 is (703)308-0758.



**ERIC F. WINAKUR  
PRIMARY EXAMINER**

  
CAM

January 16, 2001